

In the

SUPREME COURT OF MISSOURI

En Banc

Report of the Office of the Chief Disciplinary Counsel for the year
2022 together with the Financial Report of the Treasurer of the
Advisory Committee Fund for 2022

LAURA E. ELSBURY
Chief Disciplinary Counsel

IN THE
SUPREME COURT OF MISSOURI

EN BANC

REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL FOR THE YEAR
2022 TOGETHER WITH THE FINANCIAL REPORT OF THE TREASURER OF THE
ADVISORY COMMITTEE FUND FOR 2022

To the Honorable Judges of The Supreme Court:

Comes now the Office of Chief Disciplinary Counsel, and respectfully reports to the Court on matters concluded during calendar year 2022 or pending on December 31, 2022.

NOTE: References to Rule 5 within this Report are references to the rule effective until December 31, 2022.

I.

**THE FOLLOWING DISCIPLINARY ACTIONS WERE TAKEN BY
THE COURT DURING 2022 BASED ON PROCEEDINGS
PROSECUTED BY THE OFFICE OF
CHIEF DISCIPLINARY COUNSEL¹**

ANGSTEAD, ROBERT K., Brookfield, MO, Missouri Bar #37795

Surrendered license and disbarred: Violation of Rule 4-3.4(c). Date of Order: August 30, 2022.

BAYLARD, DANIEL JOSEPH, Blue Springs, MO, Missouri Bar #56639

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.15, 4-3.4(c), 4-5.5, 4-8.1(c), 4-8.4(c), and 4-8.4(d). Date of Order: September 9, 2022.

COMBS, CHRISTOPHER M., St. Louis, MO, Missouri Bar #65512

Suspension, suspension stayed, placed on probation for two years: Violation of Rules 4-1.15(a), 4-1.15(a)(5), 4-1.15(a)(6)(B), 4-1.15(a)(7), 4-1.15(b), 4-1.15(d), 4-1.15(f), and 4-1.5(a) and/or 4-1.16(d). Date of Order: November 22, 2022.

COSTELLO, BRIAN WILLIAM, Kansas City, MO, Missouri Bar #52685

Immediate suspension from the practice of law pursuant to provisions of Rule 5.24. Date of Order: March 28, 2022.

DEMPSEY JR., RICHARD BLONG, St. Louis, MO, Missouri Bar #46671

Default suspension from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of three years: Violation of Rules 4-1.1, 4-1.3, and 4-1.4. Date of Order: July 7, 2022.

FLUHR, AURORA MOZELLE, St. Louis, MO, Missouri Bar #52490

Immediate suspension from the practice of law pursuant to provisions of Rule 5.24. Date of Order: October 31, 2022.

FULCHER, DARREN EARNEST, Kansas City, MO, Missouri Bar #49548

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Violation of Rules 4-1.8(e), 4-1.15(a), 4-1.15(d), and 4-1.15(f). Date of Order: November 22, 2022.

¹ Often there are attorneys with the same or similar names. It is important to note the bar number and location of the individual.

GARDNER, KIMBERLY M., St. Louis, MO, Missouri Bar #56780

Public Reprimand: Violation of Rules 4-3.3(a), 4-3.4(a), and 4-3.4(d). Date of Order: August 30, 2022.

GORE, JAMES EDWARD, Kansas City, MO, Missouri Bar #58522

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.16(d), and 4-8.1(c). Date of Order: May 11, 2022.

HESTER, LORENZO ANTOINE, St. Louis, MO, Missouri Bar #56211

Disbarment: Violation of Rules 4-1.4(b), 4-1.5(a), 4-1.5(c), 4-1.8(e), 4-1.8(h)(1), 4-1.15(a), 4-1.15(a)(6), 4-1.15(a)(6)(A), 4-1.15(a)(7), 4-1.15(b), 4-1.15(d), 4-1.15(f), and 4-8.4(c). Date of Order: December 8, 2022.

HILL, BRADLEY C., Lee's Summit, MO, Missouri Bar #64606

Suspension, suspension stayed, placed on probation for two years: Violation of Rules 4-1.1, 4-1.3, 4-1.4, and 4-1.5. Date of Order: November 1, 2022.

HOLADAY, STEPHEN WAYNE, St. Joseph, MO, Missouri Bar #62010

Public Reprimand with Requirements: Violation of Rule 4-8.4(c). Date of Order: March 11, 2022.

HOWE, MEAGAN M., Lebanon, MO, (now Greenville, IL), Missouri Bar #63774

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: October 4, 2022.

HUNT, JACQUELYN BUSCH, Cuba, MO, Missouri Bar #45785

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.15(c), 4-3.4(c), 4-8.1(c), and 4-8.4(d). Date of Order: November 1, 2022.

JOHNSON, RICHARD WAYNE, Kansas City, MO, Missouri Bar #52416

Suspension, suspension stayed, placed on probation for two years: Violation of Rules 4-1.15(a) and 4-1.15(f). Date of Order: June 2, 2022.

KENNEY, KEVIN W., Leawood, KS, Missouri Bar #44147

Disbarment: Rule 5.20 (Reciprocal – Kansas); Violation of Rules 4-3.1, 4-3.3(a)(1), 4-8.4(c), and 4-8.4(d). Date of Order: February 16, 2022.

KLOPFENSTEIN, BRIAN J., Kearney, MO, Missouri Bar #33722

Public Reprimand with Requirements: Violation of Rules 4-1.1, 4-1.3, 4-1.4, and 4-8.4(d). Date of Order: July 29, 2022.

MAGEE, RICHARD, St. Louis, MO, Missouri Bar #29943

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of one year: Violation of Rules 4-1.1, 4-1.3, 4-1.4, and 4-1.15. Date of Order: November 1, 2022.

MARTIN, REBECCA JANE, Kansas City, MO, Missouri Bar #60213

Surrendered license and disbarred: Violation of Rules 4-1.3, 4-1.4(a)(1), 4-1.4(a)(3), 4-1.4(b), 4-1.15(a), 4-1.15(a)(5), 4-1.16(d), 4-8.1(c), and 5.27(b)(4). Date of Order: December 20, 2022.

MCCLOSKEY, MARK T., St. Louis, MO, Missouri Bar #36144

Suspension, suspension stayed, placed on probation for one year: Rule 5.21 (Criminal Conviction). Date of Order: February 8, 2022.

MCCLOSKEY, PATRICIA, St. Louis, MO, Missouri Bar #36153

Suspension, suspension stayed, placed on probation for one year: Rule 5.21 (Criminal Conviction). Date of Order: February 8, 2022.

METZA, MOLLY MARIE, Columbia, MO, Missouri Bar #68581

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.15(a)(7), 4-1.15(d), 4-1.15(f), 4-1.16, 4-8.1(a), 4-8.1(c), and 4-8.4(c). Date of Order: July 5, 2022.

O'CONNOR, JULIA KATHLEEN, St. Charles, MO, Missouri Bar #66548

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of one year: Rule 5.21 (Criminal Conviction). Date of Order: June 28, 2022.

PETERSON, SHANNON, Kansas City, MO, Missouri Bar #69532

Default Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.5, 4-3.2, 4-8.1, and 4-8.4(d). Date of Order: April 19, 2022.

RASMUSSEN, CHRISTIAN JOSEPH, Lake Ozark, MO, Missouri Bar #55123

Default suspension from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Violation of Rules 4-1.1, 4-1.3, 4-1.4(a)(1), 4-1.4(a)(2), 4-1.6(a), 4-1.6(c), 4-3.2, 4-3.4(c), 4-8.1(c), 4-8.4(b), and 4-8.4(d). Date of Order: August 30, 2022.

SMALL, STEPHEN B., Kansas City, MO, Missouri Bar #33097

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Violation of Rules 4-1.1, 4-1.3, 4-1.7(a)(2), 4-3.1, 4-8.1(c), and 4-8.4(d). Date of Order: October 4, 2022.

STAPLES, KIRSTEN A., Las Vegas, NV (now Buffalo, NY), Missouri Bar #64179

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Violation of Rules 4-8.1(a) and 4-8.1(b). Date of Order: May 6, 2022.

SWINGLE, HARRY MORLEY, Columbia, MO, Missouri Bar #28764

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of three years: Violation of Rules 4-1.7(a)(2), 4-3.7, 4-3.8(d), and 4-8.4(d). Date of Order: December 20, 2022.

SWISCHER, COREY, Nevada, MO, Missouri Bar #52013

Default Disbarment: Violation of Rules 4-1.3, 4-1.4(a), 4-1.5(a), 4-1.15(a), 4-1.16, 4-3.4(c), 4-8.1(c), and 4-8.4(c). Date of Order: June 28, 2022.

TYLER, KIMBERLY D., Bonne Terre, MO, Missouri Bar #38603

Suspension, suspension stayed, placed on probation for three years: Violation of Rules 4-1.9, 4-1.15(a), 4-1.15(b), 4-1.15(c), 4-1.15(f), 4-1.16(d), and 4-8.4(c). Date of Order: October 13, 2022.

VOSS, MICHAEL-JOHN, St. Louis, MO, Missouri Bar #61742

Suspension, suspension stayed, placed on probation for one year: Violation of Rule 4-8.4(c). Date of Order: November 1, 2022.

WINTERBERG, BRENT LEE, Kansas City, MO, Missouri Bar #44038

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.15(a), 4-1.15(a)(7), 4-1.15(b), 4-1.15(f), 4-3.4(c), 4-8.1(a), 4-8.1(c), 4-8.4(c), and 4-8.4(d). Date of Order: October 4, 2022.

II.

THE FOLLOWING DISCIPLINARY ACTIONS WERE PENDING BEFORE THE COURT AT THE CLOSE OF 2022 BASED ON PROCEEDINGS PROSECUTED BY THE OFFICE OF CHIEF DISCIPLINARY COUNSEL

AMIRAULT, DAVID, Springfield, MO, Missouri Bar #68982

(Pending motion of discipline under Rule 5.21 was overruled. Court order permitted other proceedings under separate Rule 5 provisions.)

BENDER, PETER G., Springfield, MO, Missouri Bar #46976

(Public Reprimand: Violation of Rules 4-1.7(a)(2) and 4-8.4(d). Date of Order: March 7, 2023.)

BLACK, KEITH ALAN, St. Louis, MO, Missouri Bar #67527

(Default suspension from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Violation of Rule 4-1.4. Date of Order: January 19, 2023.)

COLBY, JULIANE L., Shawnee, KS, Missouri Bar #67525

(Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: March 7, 2023.)

KLUSMEYER, AARON M., Springfield, MO, Missouri Bar #63006

(Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of one year: Rule 5.21 (Criminal Conviction). Date of Order: January 31, 2023.)

PREWITT, PHILIP E., Macon, MO, Missouri Bar #40602

(Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Violation of Rules 2-1.2, 2-1.3, 4-1.9(c), 4-8.4(a), and 4-8.4(d). Date of Order: March 2, 2023.)

PURDY, DAN K., Osceola, MO, Missouri Bar #18694

(Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of twelve months: Violation of Rules 4-1.7(a)(2), 4-8.4(d), and 4-8.4(g). Date of Order: April 6, 2023.)

WEAVER, JR., THAYER LANCE, St. Louis, MO, Missouri Bar #48128

(Suspension, suspension stayed, placed on probation for three years: Violation of Rules 4-1.15(a), 4-1.15(a)(5), 4-1.15(a)(6), 4-1.15(a)(7), 4-1.15(b), 4-1.15(c), 4-1.15(d), 4-1.15(f), and 4-8.4(c). Date of Order: March 7, 2023.)

III. REINSTATEMENT PROCEEDINGS

A. DISCIPLINARY MATTERS

At the beginning of the year, 13 Missouri lawyers who had previously been disciplined had applications for reinstatement pending for processing by the Chief Disciplinary Counsel. During the year, six additional applications for reinstatement were filed and referred to the Chief Disciplinary Counsel for processing.

The OCDC processed a total of 19 disciplinary reinstatement applications during 2022. The status of those 19 applications is as follows:

Reinstated	5
Pending with OCDC	14

Five Petitioners Were Reinstated By The Supreme Court

1. Nancy Jeanette Fisher, Springfield, MO, Missouri Bar #62474, reinstated on April 5, 2022. Petitioner was suspended on June 4, 2019.
2. Syreeta LaShawn McNeal, Columbia, MO, Missouri Bar #60207, reinstated on June 14, 2022. Petitioner was suspended on September 15, 2020.
3. Mark David Murphy, Overland Park, KS, Missouri Bar #33698, reinstated on May 11, 2022. Petitioner was suspended on August 31, 2021.
4. James Clifton Robinson, St. Louis, MO, Missouri Bar #30969, reinstated on November 22, 2022. Petitioner was suspended on April 4, 2017.
5. Daniel L. Viets, Columbia, MO, Missouri Bar #34067, reinstated on October 20, 2022. Petitioner was suspended on October 12, 2021.

B. OTHER REINSTATEMENTS

Tax

Lawyers may be suspended for state tax issues under Rule 5.245. During 2022, the OCDC investigated and processed 20 tax suspension applications for reinstatement. Fourteen were reinstated. One application was withdrawn. Five applications remained pending at the end of 2022.

Fee

Lawyers may be suspended under Rule 6.01(f) upon non-payment of annual enrollment fees. If their non-payment exceeds three years, they must apply for reinstatement under Rule 5.28. In 2022, the OCDC investigated and processed 13 applications for reinstatement by those lawyers. Six were reinstated. Seven applications remained pending at the end of 2022.

Returns to Active Status

Lawyers may elect to become inactive under Rule 6.03. Per Rule 6.06, the OCDC investigated and processed 102 inactive lawyers' applications for reinstatement. Ninety-four were returned to active status. Six applications were dismissed. Two applications remained pending at the end of 2022.

MCLE

Lawyers may be suspended for non-compliance with Mandatory Continuing Legal Education requirements under Rule 15.06(f). During 2022, the OCDC investigated and processed 18 MCLE suspension applications for reinstatement. Seven were reinstated. One application was dismissed. Ten applications remained pending at the end of 2022.

IV. COMPLAINTS RECEIVED IN 2022 AND ACTIONS THEREON

1,892 complaints of attorney misconduct were received in 2022.

The following actions were taken on complaints received in 2022:

- 657** Formal Investigations opened
 - 411** Cases investigated by Regional Disciplinary Committees
 - 246** Cases investigated by OCDC
- 55** Cases placed in the OCDC's Informal Resolution Program
[*See Paragraph A (below)]
- 1,130** Investigations not opened (*In certain instances, OCDC does not open an investigation until after related litigation is completed.*) Approximately 29 complaints were provided a further review and response by senior OCDC staff, following complainants' requests. Some of those reviews led to an investigation being opened.
- 34** Referred to Complaint Resolution Committee (**See Missouri Bar Complaint Resolution Activity Report attached.*)
- 16** Placed in "Inquiry" status (*These cases were not opened but were monitored to determine whether an investigation should be opened in the future.*)

A. Informal Resolution Program

In this program, intake counsel assigns appropriate cases to a paralegal to contact the complainant, the respondent, or both, to assist in resolving the complaint rather than proceeding with a formal investigation. The program is used most often in response to complaints that the client has not had adequate communication from the lawyer or where the client has been unable to obtain file documents. It may also be used in a case where the complainant has trouble articulating the nature of the complaint, or seems confused about the lawyer's responsibilities or the legal process. The program has been successful in reducing complaint processing time while preserving the attorney/client relationship. Most cases in the program were resolved without opening an investigation.

B. Advisory Committee Review

Rule 5.12 permits complainants to seek review by the Advisory Committee in cases in which the OCDC or a Regional Disciplinary Committee investigated and found insufficient probable cause to believe that an attorney was guilty of professional misconduct that would justify discipline. In 2022, 43 complainants requested review. The Advisory Committee upheld the findings on 19 of these files and issued a guidance letter to four lawyers. The Committee assigned eight of the review files for further investigation. Twelve of these review files were pending with the Committee at the end of the year.

C. Fee Disputes

The Missouri Bar continues to provide a fee dispute resolution program. This program is valuable to lawyers and legal consumers by providing a forum for fee-related complaints to be addressed through a non-disciplinary structure. During the year, complainants were referred to the Fee Dispute Committee as appropriate.

D. Overdraft Notification

In 2010, the Supreme Court adopted an amendment to Rule 4-1.15 of the Rules of Professional Conduct that requires financial institutions holding lawyer trust accounts to notify the OCDC in cases where the trust account is overdrawn. In 2022, the OCDC received 46 overdraft notifications. Many of these involved negligent or careless management of trust accounts, which were often handled by education and follow-up monitoring without discipline. Some overdrafts were more serious, either by scope of the problem or by the intention of the attorney. Various levels of discipline were necessary in these matters in order to protect the public and the integrity of the profession.

V. DISCIPLINE ACTION INITIATED

A. Admonitions

The OCDC administered 29 written admonitions and the Regional Disciplinary Committees administered 34 written admonitions to Missouri lawyers. (Total: 63 admonitions). In addition, 109 guidance letters were sent to lawyers by OCDC and the Regional Committees. Guidance letters are not disciplinary action, but are used to educate the attorney on ethical responsibilities or to alert the attorney that a particular course of conduct, if unchecked in the future, may cause additional complaints to be filed.

B. Investigation Summary

Region	Investigations Pending 1/1/22	Investigations Referred 2022	Investigations Disposed in 2022
IV	43	109	99
X	62	154	143
XI	21	56	29
XV	73	96	91
OCDC	122	233	204

Region	Admonitions Issued in 2022	Guidance Letters Issued in 2022
IV	11	17
X	15	23
XI	0	3
XV	8	17
OCDC	29	49

C. Filed Hearing Matters

FILING INFORMATION

In 2022, the OCDC and the Regional Disciplinary Committees filed Informations (the formal charging document) on 79 files. “Files” indicate individual complaints against attorneys. An Information against one attorney may include charges involving multiple files.

Eighteen Informations, representing 34 complaint files, were pending before the Advisory Committee and Disciplinary Hearing Panels at the beginning of 2022. Disciplinary Hearing Panels conducted 12 hearings involving 19 files. Ten default Informations were filed directly in the Supreme Court.

D. Cases filed at the Supreme Court

RULE 5.19

In 2022, 10 disciplinary hearing panel decisions were approved by the Missouri Supreme Court, pursuant to Rule 5.19(c), without requirement of briefing and argument.

Informant’s briefs were filed pursuant to Rule 5.19(d), in the Supreme Court in nine cases. Of those nine cases, four were heard because the Respondent did not concur in a DHP’s recommended sanction, three were heard because the Informant did not concur in a DHP’s recommended sanction, and two were heard because neither party concurred in a DHP’s recommended sanction. Six disciplinary cases appeared on the Court’s oral argument calendar in 2022.

RULE 5.21

During 2022, Informations were filed under Rule 5.21(e) against five attorneys whose criminal cases were finally disposed but who had not previously been suspended on an interim basis under Rule 5.21(a) or 5.21(b): *In re Amirault*, SC99761; *In re Colby*, SC99907; *In re Howe*, SC99634; *In re Klusmeyer*, SC99843; and *In re O’Connor*, SC99496.

RULE 5.24

Two Informations requesting interim suspension for substantial threat of irreparable harm were filed in 2022: *In re Costello*, SC99542; and *In re Fluhr*, SC99841.

RULE 5.25

In 2022, two attorneys applied to surrender their license under Rule 5.25: *In re Angstead*, SC99666 (accepted August 30, 2022); and *In re Martin*, SC99810 (accepted December 20, 2022). The OCDC filed a Report and Recommendation in each of these cases.

VI. LAWYER MONITORING

OCDC staff monitor lawyers' practices in four circumstances, all intended to improve the lawyers' likelihood of maintaining a successful practice and protecting the public. In 2022, the office monitored 17 lawyers in the disciplinary diversion program established by Rule 5.105. The diversion program was created to help offenders who have engaged in relatively minor rule violations, often involving practice management.

Twenty-one lawyers were monitored in 2022 while on probation under Rule 5.225, the rule permitting probation for lawyers whose conduct did not warrant disbarment. Also, the office was asked by the Missouri Supreme Court and Missouri Board of Law Examiners in 2022 to monitor the practice of seven newly admitted lawyers. Finally, in 2022, the office monitored the practice of 12 lawyers who have been reinstated subject to an order of probation.

VII. UNAUTHORIZED PRACTICE OF LAW

The Office of Chief Disciplinary Counsel opened complaint files on seven individuals and organizations alleged to have engaged in the unlawful practice of law.

Some of these cases were referred to local prosecuting attorneys or to the Consumer Protection Division of the Missouri Attorney General's office. Others were resolved through communication with the company or individual.

Due to the workload and staff resources of OCDC, the office focused its efforts on conducting in-depth investigations in those cases where it appeared that widespread consumer fraud was occurring. Where appropriate, the office conducted investigations of complaints, and the office referred the materials to law enforcement for criminal prosecution as OCDC is only authorized to seek a civil injunction against a party for engaging in the unauthorized practice of law.

VIII. PRESENTATIONS BY OCDC STAFF

During 2022, OCDC staff gave presentations at Continuing Legal Education (CLE) seminars. The OCDC staff gave presentations to the following organizations: Bankruptcy Trustee Richard Fink; Bar Association of Metropolitan St. Louis; Christian County Bar Association; Kansas City Metropolitan Bar Association; Missouri Bankers Association; Missouri Department of Revenue; Missouri Department of Workers' Compensation; Missouri Western State University; Ross T. Roberts Trial Academy; St. Joseph Bar Association; United States Arbitration & Mediation; /United States District Court – Eastern District Trustee Panel; United States District Court – Western District of Missouri; United States District Court – Western District Trustee Panel; and University

of Missouri – Kansas City School of Law. The OCDC staff also spoke at several Missouri Bar telephone CLEs and webinars.

IX. SIGNIFICANT ACTIVITIES IN 2022

Disciplinary Case Processing

The Supreme Court has established timeline standards for the disposition of pending cases that seek to complete 75 percent of investigations within six months and 90 percent of investigations within one year. The Court has also established a timeline standard for the initial determination whether or not to open an investigative file that seeks to have new complaints and reports reviewed within two weeks of receipt. The Chief Disciplinary Counsel makes quarterly reports to the Court regarding the system's performance against the disposition timeline standards and the initial determination timeline standard. During 2022, the OCDC and the disciplinary system did not meet the disposition timeline standards in any quarter. The OCDC met its initial determination timeline standard during the first three quarters of 2022.

Law Practice Management Course

For the past several years, with the support and approval of the Supreme Court, the OCDC has worked with The Missouri Bar to present a comprehensive program to address the issues raised by the lack of law practice management skills among a few members of the Bar whose clients have repeatedly complained about them. This cooperative effort resulted in the development of a practice management course staffed by a distinguished faculty of lawyers. In 2022, the course was offered as a full-day, online session. Thirty lawyers attended the course in 2022. Those attorneys who attended, were also invited to participate in periodic interactive discussion groups during the following year to track their progress in meeting their law practice management goals established during the program.

Staff Training

In 2022, the OCDC attorney staff participated in training by attending virtual conferences offered by The Missouri Bar, the National Organization of Bar Counsel and the American Bar Association – Center for Professional Responsibility. Paralegals at the OCDC attended virtual sessions and presented training through the Missouri Paralegal Association and the Organization of Bar Investigators, an organization affiliated with the National Organization of Bar Counsel.

Supreme Court Rule 5

The Supreme Court entered an Order dated May 31, 2022, and effective January 1, 2023, repealing Rule 5 and adopting a new Rule 5, inclusive of Rule 5.01 – 5.34. The Supreme Court of Missouri has repealed and adopted a new Rule 5 pertaining to attorney disciplinary matters. Rule 5 had not been revised significantly since its adoption in 1995. As the Court explained in a media release, these revisions were made in an effort to restructure the rule to reflect and clarify current disciplinary practices and procedures. The majority of changes to the rule are not substantive in nature. The changes include:

- Giving the chief disciplinary counsel and advisory committee the authority to issue guidance letters to attorneys regarding the rules of professional conduct despite a finding of insufficient probable cause;
- Allowing the chair of the advisory committee to exercise his or her discretion to permit the filing of an answer out of time upon a showing of excusable neglect;
- Authorizing hearings before a disciplinary panel to proceed virtually when in the public's best interest;
- Requiring Missouri-licensed attorneys to self-report within 10 days of being disciplined in another jurisdiction or pleading guilty to or being convicted of any crime;
- Requiring attorneys suspended or disbarred to wind up their law practices within 15 days of the suspension or disbarment order and submit to the Court a verified certificate of compliance attesting to complete performance of all obligations under the rule, including notification of clients and delivering their law licenses to the clerk of this Court;
- Increasing the fee for a reinstatement petition to \$1,000; and
- Clarifying that attorneys may provide confidential information to legal ethics counsel when seeking an informal ethics opinion, and legal ethics counsel has no duty to report possible Rule 4-8.3 violations when disclosures are made in the course of seeking an informal ethics opinion.

The full order, which took effect January 1, 2023, is available on the Missouri Courts website at <https://www.courts.mo.gov/page.jsp?id=187056>.

The Supreme Court entered an Order on November 11, 2022, and effective January 1, 2023, correcting provisions in the new Rule 5. Specifically, the Court corrected Rule 5.12(b) and Advisory Committee Regulation 5.31(d) to Rule 5.31.

Retirement of Long-time Chief Disciplinary Counsel Alan Pratzel

After nearly 40 years of service to Missouri's attorney disciplinary system, Alan Pratzel made the decision to retire in November of 2022. Pratzel began working as a

special representative in the St. Louis region in 1985, and he was named Chief Disciplinary Counsel in 2007. The Missouri Bar honored Pratzel in 2022 with the Spurgeon Smithson Award, and he was praised by Missouri Chief Justice Paul Wilson at the 2022 joint annual meeting of the Judicial Conference of Missouri and The Missouri Bar.

The work of the OCDC continues with Deputy Disciplinary Counsel Sam Phillips and the new CDC, Laura E. Elsbury.

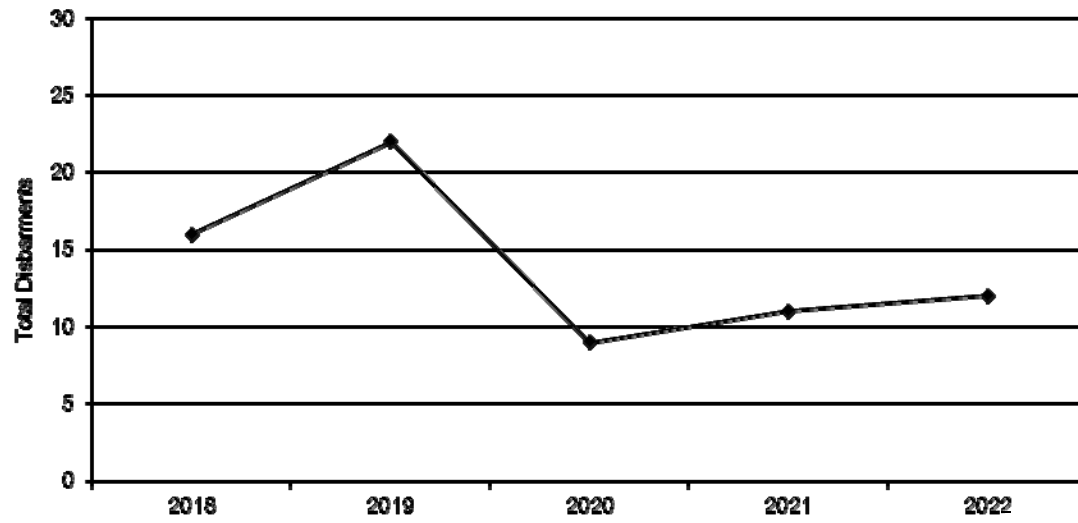
SUMMARY OF DISCIPLINE ACTIONS

During 2022:

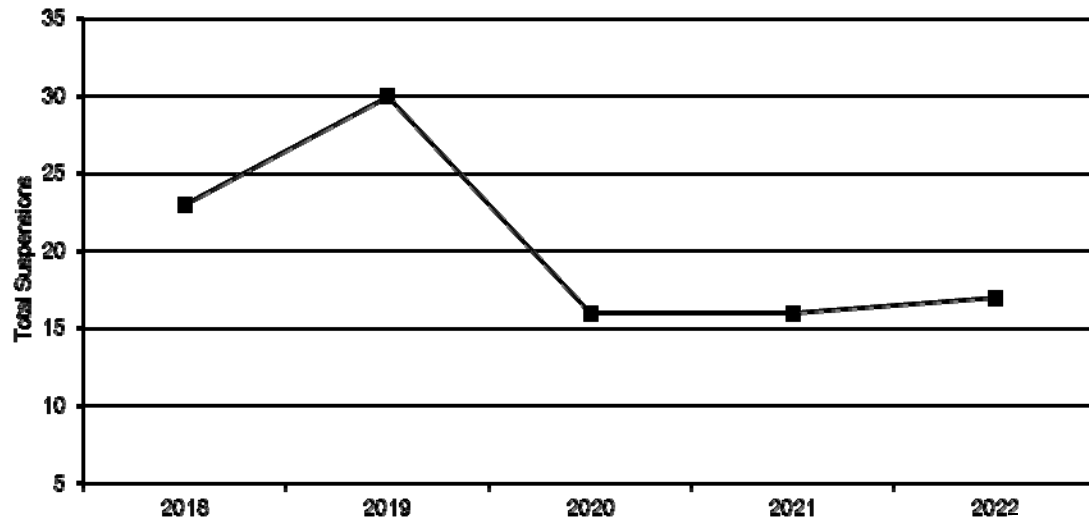
- **12** Twelve lawyers were disbarred;
- **17** Seventeen lawyers were suspended; **seven** of those suspensions were stayed and the attorneys were placed on probation with conditions;
- **17** Seventeen lawyers were suspended pursuant to Rule 5.245 (Failure to Pay Tax);
- **3** Three lawyers received public reprimands; and
- **63** Sixty-three written admonitions were administered by the Regional Disciplinary Committees and the OCDC.

On occasion, other pending complaints against a lawyer are dismissed upon that lawyer's disbarment or suspension.

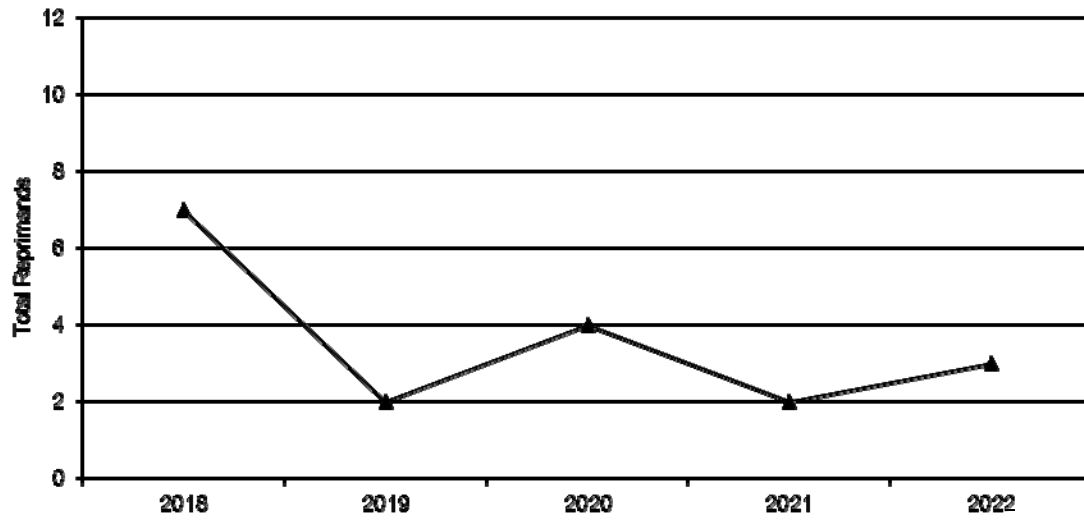
Disbarments



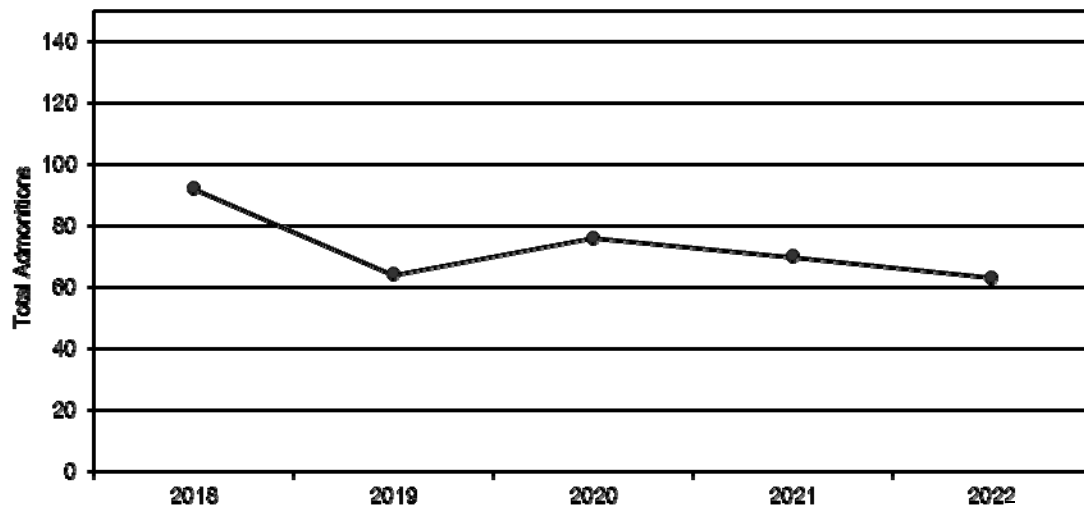
Suspensions

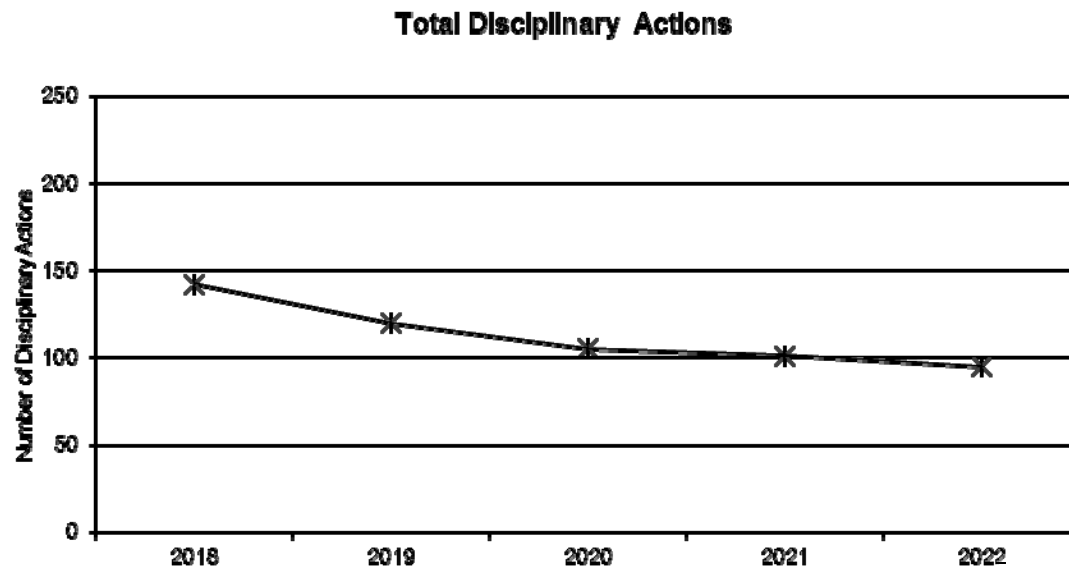


Reprimands



Admonitions





In 2022, there were a total of 95 disciplinary actions including admonitions and formal discipline matters.

The total number of complaints opened as formal investigations during 2022 was 657. The most common complaint areas are as follows:

NATURE OF VIOLATIONS *	NO.
Rule 4-1.4 (Communication)	392
Rule 4-1.3 (Diligence)	315
Rule 4-8.4(c) (Dishonesty, Fraud, Deceit, Misrepresentation)	177
Rule 4-1.5 (Excessive Fees)	148
Rule 4-1.15 (Safekeeping Property)	93
Rule 4-1.16 (Improper Withdrawal)	77
Rule 4-1.1 (Competence)	76
Rule 4-1.7 (Conflicts)	41
Rule 4-1.6 (Confidentiality)	24
Rule 4-3.3 (Truth to Tribunal)	19
Rule 4-3.8 (Prosecutorial Responsibilities)	17
Rule 4-8.4(b) (Criminal Activity)	15
Rule 4-7.2 (Advertising)	13
Rule 4-1.16(a)(2) (Incapacitated Lawyer)	10
Rule 4-3.4 (Obstruction/False Evidence)	10
Rule 4-5.5 (Unauthorized Practice)	10
Rule 4-4.2 (Communication with Person Represented by Counsel)	9
Rule 4-5.3(b) (Supervisory Responsibility)	8
Rule 4-8.4(g) (Bias)	7
Rule 4-1.14 (Diminished Capacity)	4
Rule 4-3.5(b) (Ex Parte Contacts)	4
Rule 4-4.1 (Truth to 3 rd Persons)	4
Rule 4-8.1(c) (Failure to Cooperate)	3
Rule 4-4.3 (Dealing with Unrepresented Person)	2
Rule 4-8.3 (Reporting Misconduct)	1

* Many complaints included more than one allegation.

The most prevalent practice areas which resulted in investigations are as follows:

AREA OF PRACTICE *	NO.
Criminal	184
Domestic	115
Other	81
Litigation	69
Torts	41
Estate/Probate	31
Real Property	23
Guardianship	11
Immigration/Naturalization	10
Landlord/Tenant	9
Administrative/Governmental	8
Bankruptcy/Receivership	8
Workers Compensation	8
Juvenile	7
Traffic	7
Contracts	4
Commercial Law	2
Taxation	2
Collections	1
Corporate/Banking	1
Insurance	1
Labor Law	1
Patent/Trademark	1

* Investigations involving trust account overdraft notifications made to the OCDC are not included in this tabulation.

Dated at the Office of Chief Disciplinary Counsel at Jefferson City, Missouri this 14th day of August, 2023.

Respectfully Submitted,

LAURA E. ELSBURY
Chief Disciplinary Counsel

LEGAL ETHICS COUNSEL ANNUAL REPORT FOR 2022

I. LEGAL ETHICS COUNSEL’S ROLE

A. Informal Advisory Opinions

Pursuant to Rule 5.30(c), the Legal Ethics Counsel issues nonbinding informal advisory opinions to members of the bar about Rules 4, 5, and 6.

The Legal Ethics Counsel office provided 998 oral informal advisory opinions via telephone. Many of these opinions involved multiple questions. Opinions given in conjunction with informal contact at bar meetings and CLE programs are generally not included in this count.

The Legal Ethics Counsel office provided 21 written informal advisory opinions.

The Advisory Committee authorized the publication of 10 new informal opinions. Pursuant to Rule 5.30, written summaries of select informal opinions provided by the Legal Ethics Counsel are published for informational purposes for members of the bar. Informal opinions are advisory in nature and are not binding.

The Legal Ethics Counsel office is also conducting a comprehensive review of formerly published informal advisory opinions to ensure accuracy and relevance. This will be an ongoing project.

B. CLE Presentations

The Legal Ethics Counsel office prepared and gave 11 CLE presentations for various groups including: National Organization of Bar Counsel, Cole County Bar Association, The Missouri Bar, and Missouri Municipal Attorneys Association. The Legal Ethics Counsel also moderated rebroadcasts of some of these CLE presentations.

II. ROLE OF THE LEGAL ETHICS COUNSEL TO THE ADVISORY COMMITTEE:

Rule 5.07(b) provides that the Legal Ethics Counsel shall serve as staff to the Advisory Committee.

A. Review Summaries

Pursuant to Rule 5.12, the Advisory Committee reviews investigation files if the OCDC or a Regional Disciplinary Committee finds no probable cause and the complainant requests review. The Legal Ethics Counsel office summarized and distributed 45 review files to the Advisory Committee.

B. Hearings

The Legal Ethics Counsel office assisted Disciplinary Hearing Officers, as requested, with arrangements for hearings.

The Legal Ethics Counsel administered the hearing process to assist the Chair of the Advisory Committee. As part of this process, the Legal Ethics Counsel proposed hearing panels, provided the file to the hearing panel once the panel was approved by the Chair, monitored the progress of the hearing, and assisted the hearing officers with issues that arose during the course of the process. 29 Informations were filed in 2022.

Rule 5.16 provides, in part:

(e) The written decision of the disciplinary hearing panel shall be filed with the chair of the advisory committee. The chair shall review the panel's decision for the limited purpose of determining that the recommendation for discipline, if any, conforms to this Rule 5 and the sanctions established by the Court. If the chair of the advisory committee determines that the panel's recommendation does not conform, the chair shall direct the disciplinary hearing panel to reconsider its recommendation for discipline. After reconsideration, the panel shall file the revised written decision with the chair of the advisory committee.

(f) The chair of the advisory committee shall serve the written decision of the disciplinary hearing panel by first class United States mail, postage prepaid, on the respondent, the counsel for the informant, and the chief disciplinary counsel.

The Legal Ethics Counsel performed the majority of these duties on behalf of, and in consultation with, the Chair.

The Legal Ethics Counsel prepared and presented an extensive training program for disciplinary hearing officers, and continually updates resources to assist disciplinary hearing officers.

The Court issued an Order comprehensively updating Rule 5, and the Legal Ethics Counsel made efforts to educate lawyers through CLEs, disciplinary hearing officers through training, and the public by updating information regarding the disciplinary hearing process on its website.

C. Budget

The Legal Ethics Counsel prepared a proposed budget for the Advisory Committee and LEC office for 2023.

D. Meetings

The Legal Ethics Counsel office coordinated arrangements for regular Advisory Committee meetings. The Legal Ethics Counsel office prepared agendas, meeting materials and minutes for these meetings.

E. Formal Opinions

The Legal Ethics Counsel provided assistance to the Advisory Committee in relation to reviewing requests for formal opinions and possible appropriate topics for formal opinions in accordance with Rule 5.30(a).

F. Overdraft Reporting/Financial Institution Approval

Beginning January 1, 2010, Missouri attorneys were required to have their trust accounts at financial institutions “approved” by the Advisory Committee. In order to be approved, the financial institution must enter into an agreement to report insufficient funds situations that arise on attorneys’ trust accounts to the Office of Chief Disciplinary Counsel. The Legal Ethics Counsel handled issues related to bank name changes, mergers, etc., as they relate to approved status. The Legal Ethics Counsel maintained a list of approved banks on the office website.

G. Other matters

The Legal Ethics Counsel office maintained a website for the Advisory Committee and Legal Ethics Counsel, www.mo-legal-ethics.org. The website includes a list of pending disciplinary matters, a calendar of upcoming disciplinary hearings, information on public access to disciplinary records pursuant to Rule 5.31, articles and CLE materials on legal ethics issues prepared by the Legal Ethics Counsel office, and links to various resources. The Legal Ethics Counsel office continues to develop resource pages for lawyers on specific ethics topics that are posted on its website. Development of a new website was started in 2022, to be completed in 2023, which will include a new informal opinions

database interface to better assist lawyers. The Legal Ethics Counsel office also wrote articles for publication in the *Journal of the Missouri Bar*.

Additionally, the Legal Ethics Counsel served on the Planning Committee for The Missouri Bar's Solo & Small Firm Conference and served as a member of the ABA Standing Committee on Ethics and Professional Responsibility starting in 2020 for a term until 2023.